IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 57 of 1990
with
WEALTH TAX REFERENCE No 58 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF WEALTH-TAX
Versus
ABDULSAEED ABDULHAMID PATEL

Appearance:
1. WEALTH TAX REFERENCE No. 57 of 1990
MR KM PARIKH for Petitioner No. 1
NOTICE NOT RECD BACK for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 05/05/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE A.M.KAPADIA)

In these two references at the instance of the revenue, the Income-tax Appellate Tribunal, Ahmedabad Bench "A", under section 27 (1) of the Wealth-tax Act, 1957 ('the Act' for short), has referred the following common questions of law for our opinion for the assessment years 1981-82 and 1982-83:

"(1) Whether, the Tribunal is right in law and on facts in allowing 1/6th as repairs irrespective of the fact that the assessee has incurred any expenditure on repairs, though the same is not allowable deduction in Wealth-tax Act for valuation purposes?"

(2) Whether, the Tribunal is right in law and on facts in allowing collection charges at Rs.10,578/- as against the Wealth-tax Officer allowing this expenditure to the extent of Rs.3,600/-?"

2. Since common questions of law and facts are involved and the controversy raised in both these references is arising out of claim made by the respondents - assessees who are co-owners of the same property each having 1/3rd share in the property, for the sake of convenience, both these references are heard together and decided and disposed of by this common judgment.

3. In order to decide the controversy raised in these two references, it is relevant to refer to the facts stated in Reference No.57 of 1990.

3.1. The respondent - assessee is an individual. At the relevant time the wealth of the assessee consisted of movable and immovable properties. The assessee is having immovable property situated at Fatehganj, Baroda having joint property wherein he has got 1/3rd share which was let out by him. The building in question is let out to three tenants - Bank of India, Indian Airlines and Oriental Insurance Co. (Pages 79 and 80 of the Paperbook). The assessee claimed that 1/6th of the rent be allowed to him as repairs. According to the assessee, he had to bear the annual repair expenses. Similarly he also claimed deduction of collection charges. According to him, 1/6th of the gross rent be allowed to him as repairs and maintenance and after ascertaining the gross

rent from the income-tax record. Capitalised value was claimed at 12%. The Wealth tax Officer rejected the claim for 1/6th repairs on the ground that the same was not an allowable deduction under the Act and for valuation purposes. He however, allowed collection charges to some extent. He followed the capitalised value at 8% for valuation purposes and also made addition on account of unutilised FSI and the stronger foundation for valuation purposes.

3.2. In appeal, the Appellate Assistant Commissioner of Wealth tax accepted the assessee's claim on all the above points and in second appeal at the instance of the revenue, the Tribunal confirmed the order of the Appellate Assistant Commissioner, which has given rise to the present two references at the instance of the revenue by raising the questions to which reference is made in the earlier paragraph of this judgment.

4. We have heard Mr. KM Parikh, learned counsel for the revenue. Though the respondents assessees are not served, as the notices sent to them have not been received back, in these old references we thought it fit not to wait till the service is effected on the respondents - assessees as the questions referred to us for our opinion in these references are required to be answered in favour of the assessees and against the revenue.

5. The only question which is raised by Mr. Parikh, learned counsel for the revenue is that since there is no provision in the Act to allow 1/6th of gross rent towards repairs and any amount by way of collection charges while determining the valuation of a non-residential property by rental method, the findings arrived at by the Appellate Assistant Commissioner and affirmed by the Tribunal deserve to be quashed and set aside.

6. It is also contended that since there is no provision in the Act to allow 1/6th of the gross rent towards repairs, considering similar provisions in the Income-tax Act for arriving at the income from the house property is misconceived. Besides this, it is also contended that there is no evidence towards repairs and maintenance expenses produced by the assessees and therefore if no money has been spent on repairs and maintenance, no allowance could be made towards outgoings. He therefore urged that the questions referred to in these two references are required to be answered in the negative, in favour of the revenue and against the assessee.

In support of the aforesaid contention, the learned counsel for the revenue invited our attention to Rule 1BB of the Wealth-tax Rules, 1957 ('the Rules' for short) which according to the learned counsel does not stipulate the provision for valuation of a house which is let out only or mainly for non-residential purposes such as business purposes.

7. We have considered the submissions advanced by Mr. KM Parikh, learned counsel for the revenue. We have also gone through the facts of the case and the orders of the authorities below. We have also carefully considered the statutory provisions contained in Rule 1BB of the Rules.

8. Both the assessees are co-owners and each of them is having 1/3rd share in the property which was let out at the relevant time. Both of them therefore claimed 1/6th of the rental as repairs and collection charges at the rate of Rs.10,578/- It is true that there is no provision in the Rules to claim allowances as repairs in respect of a non-residential property as Rule 1BB of the Rules stipulates the provision for allowance with regard to residential property only.

9. Since this Rule is traceable to Section 7 of the Act, a reference to the same is necessary. Section 7 of the Wealth-tax Act provides how to determine the value of assets. Sub-section (1) thereof provides that subject to any rules made in this behalf, the value of any asset, other than cash, for the purposes of this Act, shall be estimated to be the price which in the opinion of the Assessing Officer it would fetch if sold in the open market on the valuation date. Sub-section (2) provides that notwithstanding anything contained in sub-section (1), where the assessee is carrying on a business for which accounts are maintained by him regularly, the Assessing Officer may, instead of determining separately the value of each asset held by the assessee in such business, determine the net value of the assets of the business as a whole having regard to the balance sheet of such business as on the valuation date and making such adjustments therein as may be prescribed. Similar provision is made where the assessee carries on the business as a Company.

Sub-section (4) provides that notwithstanding anything contained in sub-section (1), the value of a house belonging to the assessee and exclusively used by him for residential purposes in the last twelve months

may be taken to be the price which it would fetch if sold in the open market on the valuation date after the date of his acquiring ownership therein or on 1st April 1971, whichever valuation date is later.

10. Notwithstanding the aforesaid provisions of sub-section (4) of Section 7, Rule 1BB referable to sub-section (1) of Section 7 lays down the following formula for making valuation of a house which is wholly or mainly used for residential purposes -

"1BB. (1) For the purposes of sub-section (1) of section 7, the value of a house which is wholly or mainly used for residential purposes shall be the aggregate of the following amounts, namely:-

(a) the amount arrived at by multiplying the net maintainable rent in respect of the part of the house used for residential purposes by the fraction 100/8; and

(b) the amount arrived at by multiplying the net maintainable rent in respect of the remaining part of the house, if any, by the fraction 100/9:

Provided that xxxx xxxxx xxxxxxx

Explanation: For the purpose of this sub-rule, a house shall be deemed to be mainly used for residential purposes, if the built-up floor area thereof used for residential purposes is not less than sixty-six and two-third per cent of its total built-up floor area.

(2) xxxxxxxxxxxx
(a)xxxxxxxxxx
(i) xxxxx
(ii) xxxxx
Explanation: For the purposes of this clause,
(a) xxxxx
(b) xxxxx
(b) xxxxxxxxxxxx
(c) "net maintainable rent", in relation to a house, means the amount of the gross maintainable rent as reduced by -
(i) xxxxxxxx
(ii) a sum equal to one-sixth of the amount by which

the gross maintainable rent exceeds the amount referred to in sub-clause (i), in respect of the repairs of the house;

(iii) any sums spent during the previous year to collect the rent from the house, not exceeding six per cent of the amount by which the gross maintainable rent exceeds the amount referred to in sub-clause (i);

(iv) xxxxxxxxxxx"

11. On having look at the statutory provisions contained in rule 1BB of the Rules, as per sub-clause (ii) of clause (c) of rule 1BB (2) of the Rules, there is a provision to allow a sum equal to one-sixth of the amount by which the gross maintainable rent exceeds the amount referred to in sub-clause (i), in respect of the repairs of the house. It is true that Rule 1BB providing for valuation of house on which reliance has been placed by the AAC as well as the Tribunal, applies to a house which is wholly or mainly used for residential purposes and it also appears that the property in question was being used for non-residential purposes (tenants being Bank of India, Indian Airlines and Oriental Insurance Co. - Pages 79 and 80 of the Paperbook), but at the same time, the Wealth-tax Rules, 1957 do not contain any specific rule for valuation of a house which is used for non-residential purposes. Sub-section (2) of Section 7 provides that where the assessee is carrying on business for which the accounts are maintained by him regularly, the Assessing Officer may, instead of determining separately the value of each asset held by the assessee in such business, determine the net value of the assets of the business as whole having regard to the balance sheet of such business as on the valuation date and making such adjustments therein as may be prescribed. Hence the rule making authority may not have provided for a separate rule for a house being used only or mainly for the business purposes, but since the value of the house in question let out to the tenants for non-residential purposes has been determined separately and the assets of the assessee's business have not been valued as a whole, the Assessing Officer had to follow rationale principles for valuation of the business house as well. If repairs and rent collection charges are legitimate deductions for determining the net maintainable rent of a residential

house, whether self occupied or tenanted, there is no reason why they should be treated as not legitimate deductions for a house let out for business purposes. Moreover, it is common experience that immovable business property which is tenanted to tenants is ordinarily subjected to more wear and tear than immovable property used by the owner for his personal use. Contention that the learned AAC has wrongly considered similar provision of Income tax Act for arriving at the income from the house property has also no substance because when there is no specific provision in the relevant Act or rules, similar provision in another Act or Rules and more particularly tax statute can be invoked for determining the net rent from the house property.

12. As regards the contention that there is no evidence towards repairs and maintenance expenses produced by the assessees, although the Assessing Officer on appreciation of the evidence on record took the view that it was for the tenants to maintain the building and, therefore, the assessees were not entitled to claim any deduction towards repairs, however, on re-appreciation of evidence, the AAC took the view that it was the assessees (lessors) who were repairing and maintaining the building. This finding was arrived at after considering the correspondence between the assessees and the lessees. Apart from this finding of fact, the principle of deducting 1/6th as repairs is very much provided in Rule 1BB irrespective of the fact whether the assessee has actually incurred any expenditure on repairs. Similar is the provision for assessing income from house property under the provisions of the Income-tax Act and the Rules. There is, therefore, no reason why this principle for valuation of the net maintainable rent should not apply to the house which is used or let out for non-residential purposes.

13. In view of the above discussion, we are of the opinion that the Tribunal is right in law and on facts in allowing 1/6th as repairs irrespective of the fact whether the assessees have incurred any expenditure on repairs and though there is no specific provision for such deduction in the Wealth-tax Act and the Wealth-tax rules for valuing the house used for non-residential purposes. Our answer to question No.1 is, therefore, in the affirmative i.e. in favour of the assessee and against the revenue.

14. Now, coming to the next question, that is, allowing collection charges at Rs.10,578/-, it is seen that the learned AAC has observed that the allowance of

outgoings towards rent collection charges is restricted to 6% of the property's net rateable value of the property under the Income tax Act and that the allowance of 3% to 6% is considered by the valuation experts as a reasonable allowance for rent collection. The learned AAC has found that an amount of RS.10,578/= towards collection charges for each year in question was expended by the assessees and that it was less than 4% of gross rent. The learned AAC held that the outgoings must be restricted to the actual payment in this account and that the assessees' claim of 30% as a whole as outgoings was not reasonable.

15. We are in complete agreement with the finding arrived at by the learned AAC which is affirmed by the Tribunal. Besides this, by virtue of sub-clause (c) (iii) of rule 1BB (2) of the Rules, any sums spent during the previous year to collect the rent from the house, not exceeding six per cent of the amount by which the gross maintainable rent exceeds the amount referred to in sub-clause (i) is the net maintainable rent in relation to a house. Therefore, for collection charges, actual expenditure should not exceed 6%. In the instant case, it is less than 4% of the gross rent. We are therefore of the opinion that the aforesaid finding of the Tribunal is just and proper and the Tribunal is right in law and on facts in allowing collection charges at Rs.10,578/- as against the wealth tax officer allowing this expenditure to the extent of Rs.3,600/-.

16. In view of the above discussion, we are of the view that the Tribunal is right in law and on facts in allowing 1/6th as repairs irrespective of the fact the assessees have incurred any expenditure on repairs though the same is not allowable deduction in the Act for valuation purposes and also is right in law and on facts in allowing collection charges at Rs.10,578/- as against the Wealth-tax Officer allowing this expenditure to the extent of Rs.3,600/-.

17. We, therefore, answer both the questions in the affirmative, i.e., in favour of the assessees and against the revenue.

18. Both the references accordingly stand disposed of.

(M.S. Shah, J.) (A.M. Kapadia, J.)

(karan)